IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9917 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOUDDIN YAQUBBHAI SHAH & 2 - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR TS NANAVATI for Applicant(s) : 1 - 3.
MR HL JANI for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,
MR SHAKTISINH GOHIL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 27/09/2005

ORAL JUDGMENT

1.Rule. Mr. H.L.Jani, learned Assistant Public Prosecutor waives service of rule on behalf of respondent

no. 1 and Mr. Shaktisingh Gohil waives service of rule on behalf of respondent No. 2. At the request of the parties, the matter is taken up for final hearing.

2.The petitioners/original accused have filed this petition under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the investigation in respect of the petitioners in FIR I-82 of 2005 lodged at Kosamba Police Station, Dist. Surat, on 01.07.2005 for offences under Sections 407, 468, 469, 471, 472, 473, 406, 417, 418, 422, 193, 197 read with Sections 120B, 114 and 34 of the Indian Penal Code.

3.This court has passed an order on 19.09.2005 recording the submissions of the learned advocates appearing for the respective parties that the dispute is already settled between the parties and the Memorandums of Understanding are placed on the record of this case. This matter is, therefore, kept today for passing further order.

4.Heard Mr. T.S. Nanavati, the learned advocate appearing for the petitioners, Mr. H.L. Jani, the learned Assistant Public Prosecutor for the respondent no. 1 State and Mr. Shaktisinh Gohil, the learned advocate appearing for the

respondent no. 2. The case of the petitioners is that in respect of N.A. land being situated in village- Moti Naroli of Taluka- Mangrole, Dist: Surat in Block No. 94, Survey No. 110 paiki admeasuring 1014.40 Sq.Mtrs. and N.A land situated in Block No. 96, Survey No. 111 paiki admeasuring 4598.50 Sq.Mtrs., two different sale deeds came to be registered with the Sub-Registrar of documents, Mangrole on 17.09.1983 being Registration No. 2213 and 2214 respectively. The said sale deeds were executed in favour of the complainant – Company. He has further submitted that one Mr. Amrendrakumar Adityaprasad Mishra, the erstwhile Regional Manager was serving with the complainant company and was also the Power-of-Attorney holder vide Power-of-Attorney dt 06.03.1985. The said Mr. A.K. Mishra had resigned on 30.04.1988.

5.The petitioners have purchased the above-referred properties in the year 2000 on the basis of the said Power of Attorney stated to have been signed by Shri A.K. Mishra, and got necessary entries made in the revenue record in respect of the said properties. Since Shri A.K. Mishra had resigned from the services of the company in 1988, he was not authorised to sign any such document and use the seal of the company. The said Power of Attorney was, therefore, a forged document. The

complainant company, on coming to know about the said act of the petitioners immediately lodged a criminal complaint to the DSP Surat (Rural). On the basis of the said complaint an FIR I-82 was registered at Kosamba Police Station against the petitioners of the alleged offences punishable under the above referred Sections. Pursuant thereto, the petitioner no. 1 was arrested on 01.07.2005 and was remanded to police custody upto 07.07.2005. On further investigation by the police, it was noticed that one Shri B.B. Motiwala who was working with the complainant company prepared the said forged Power of Attorney. Although he resigned from the services of the complainant company long back, he projected himself before the petitioners as an employee and authorised officer of the company for execution of such sale deeds/power of attorney. Thus, the said Mr. Motiwala cheated the petitioners by preparing a fake Power of Attorney in favour of the petitioner no.1 and forged the signature of Shri A.K. Mishra on the fake Power of Attorney by affixing the seal of the company.

6.After filing of the said complaint, the petitioners approached to the company and offered to hand over the possession of the properties and/or to ratify the said sale-deed and to pay the market cost of the properties.

Since the property in question is in the possession of the petitioners and in their names in the revenue records and since the petitioners have shown their willingness to purchase the said properties, the complainant company, knowing fully well that the petitioners have been cheated by an ex-employee of the company, finally decided to compromise the matter with the petitioners by selling the properties to them by taking the sale consideration. Accordingly, Memorandum of Understanding came to be arrived at on 23.07.2005, one in respect of the N.A.lands situated in village Siyalaj, Ta. Mangrol, Dist. Surat and another in respect of N.A. lands situated in village Moti Naroli, Ta. Mangrol, Dist. Surat by and between the complainant as the first party denoted therein and the petitioners as second party denoted therein. Both these Memorandums of Understanding are placed on the records of this court as Annexure- C & D to the petition. In the said Memorandum of Understanding the following terms and conditions were incorporated:-

(A) The second party will fully cooperate with the first party in prosecuting Shri B.B. Motiwala who master minded this forgery.

(B) The second party will lend their full support to the police also in their investigation against Shri B.B.Motiwala and or any other person who connived with

Shri Motiwala to prepare forged power of attorney and or any other forged documents on behalf of the fist party to sale / mortgage any other immovable properties of the first party.

(C)The second party will pay Rs. 15,00,000/-(Rs. Fifteen lakhs only) on or before 20.07.2005 by Demand Drafts only favouring J.K.Synthetics Ltd. Payable at Kanpur (U.P) for the consideration of the said property.

(D)Accordingly, the second part paid an amount of Rs.15,00,000/-(Rs. Fifteen lakhs only) at the office of the First part at Ahmedabad through three Demand Drafts No. 534110, 534111 both dated 18.07.2005 for Rs. 5,00,000/-(Rs. Five lakhs only) each drawn on State Bank of Saurashtra and D.D No. 190595 dated 18.07.2005 for Rs. 5,00,000/-(Rs. Five lakhs only) drawn on UTI bank Ltd. Payable at Kanpur in the name of J.K. Synthetics Ltd.

(E)It is agreed that having received full payment of purchase price, the party of the first part shall execute deed of Conveyance, if required, in favour of Amjad Khan Feroz Khan Pathan.

(F)It is agreed that stamp duty, registration charges and other out of pocket expenses in respect of execution of deed of conveyance shall be borne by the parties of the second part only.

(G)After realizing the said Demand Drafts the first part

will lend support in getting Mr. Mayuddin Yakkubhai released on bail and will not object to the bail application.

(H)Second party will file a Quashing petition before the Hon'ble High Court of Gujarat and first party will lend support and will not object the said quashing petition, limited to removal of all charges against the second party.

(I)In future, if any thing is to be required to be done in connection with the aforesaid Scheduled Property, such as any kind of further documentation or affidavit or declaration or any other necessary formalities then the same will be at the cost and consequences of the Second party. In such case, First party will co-operate to the Second party and vice versa.

7.So far as the second Memorandum of Understanding is concerned more or less the same terms and conditions were incorporated. Only the figures are changed and it is stated therein that the present petitioners shall pay sum of Rs. 5,00,000/-(Rs. Five lakhs only) on or before 20.07.2005 by Demand Draft only favouring J.K. Synthetics Ltd. i.e. respondent no. 2. The said amount was in fact paid and that is also recorded in the Memorandum of Understanding.

8.In the above view of the matter, the court is of the view that since the settlement is arrived at between the parties and no dispute remains between them and even the dispute was prima facie of the civil nature, it is not just and proper to drag the parties to criminal proceedings. The legal position is well settled and this court as well as the Hon'ble Supreme Court have taken the view in many cases that when the dispute is of civil nature and an amicable settlement is arrived at between the parties, the court should not normally drag the parties to face the criminal trial.

9.Following several judicial pronouncements made on the issue of settlement even in respect of uncompoundable offences and looking to the facts and circumstances of the case and further ascertaining the facts of settlement between the parties from the complaint who is present before the court and after considering the submissions made by the learned advocates appearing on behalf of the respective parties, the court is satisfied about the settlement and is of the view that the complaint deserves to be quashed and set aside qua the petitioners. It is however, made clear that this should not be treated as precedent and this order would not come in the way of any

other authorities such as Board for Industrial and Financial Restoration (BIFR), Stamp Duty authority etc who might have initiated or may initiate any proceedings on the basis of this settlement or as a result of the transactions entered into between them. It is further made clear that in the Memorandum of Understanding, for the first time the purchaser's name namely Mr. Amjad Khan Feroz Khan Pathan is mentioned and it is stated that he will make the payment of Rs. 5,00,000/- (Rs. Five lakhs only) each in respect of these two transactions to the respondent no. 2 and the respondent no. 2 will transfer the properties in dispute in the name of the said Mr. Amjad Khan Feroz Khan Pathan. This order will not be treated as the permission given by the court to execute the documents by respondent no.2 in favour of the said Mr. Amjad Khan Feroz Khan Pathan. If the respondent no.2 is restrained from transferring its properties by any authority such as BIFR or any order is operative against respondent no.2 by any competent court or forum this order would not absolve respondent no.2 from honouring such orders, if any. Even if the Stamp Duty authority considers this transaction as the second sale transaction, the respondent no.2 shall not be entitled to claim the benefit of this order for that purpose.

10.Subject to the aforesaid directions and observations, the complaint filed against the present petitioners being FIR I-82 of 2005 lodged at Kosamba Police Station, Dist Surat is hereby quashed and set aside. Rule made absolute to the above extent without any order as to cost.

(K.A. PUJ, J.)

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